

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TN

CONSUMER ADVOCATE DIVISION

v.

BELLSOUTH TELECOMMUNICATIONS,
INC.

DOCKET NO. 00-00041

MOTION TO COMPEL ANSWERS, TO HAVE ANSWER DEEMED ADMITTED, AND TO
MODIFY SCHEDULING ORDER TO PERMIT THE TAKING OF DEPOSITIONS

Comes the Consumer Advocate and Protection Division, on behalf of Tennessee consumers, and moves to compel BellSouth to answers discovery, to have an answer deemed admitted, and to modify the scheduling order to permit the taking of depositions. For cause the Consumer Advocate and Protection Division would show:

1. That the hearing officer in this case ordered the parties to respond to discovery by December 18, 2000 and to present motions related to discovery by January 4, 2001.
2. That BellSouth has failed to answer Interrogatory requests 3, 5, 6, 7, 14, 16, 21, 22, 23, 24, 25, 26, 27, 29, 30 or the answers are evasive and incomplete.
3. Counsel sought to speak with counsel for BellSouth and was advised that Mr. Turner was the proper person to deal with responses to discovery but Mr. Turner was not available.
4. With respect to request 3. BellSouth has failed to describe the method it uses to notify consumers or to state that it does not notify consumers.
5. With respect to request 4. BellSouth should either state that it does not make such a contention or produce the information requested.

6. With respect to requests 6 and 7 BellSouth should provide the information which permits Tennessee consumers to compare, contrast and distinguish between basic local exchange service as it existed on June 6, 1995 and the "new service" as a result the information sought is relevant or might lead to relevant evidence. Moreover, the TRA has power to modify its interim order if any facts warrant the modification.
7. With respect to request 14 the information sought is intended to disclose whether BellSouth, the IXC's or CLEC's are binding consumers to any terms of the contracts between the companies and whether consumers have knowledge of the terms. The question is not ambiguous. Tennessee consumers contend that the contracts do not bind consumers in any way. Moreover, Tennessee consumers can amend their complaint if any practices of the companies with respect to the contracts are unlawful.
8. With respect to request 16 the information is relevant and material or likely to lead to material evidence regarding the nature of BellSouth's proposed tariff since BellSouth has asserted that it has done the same thing it is attempting to do here in other states.
9. With respect to request 21, Tennessee consumers respectfully submit the the implementation of late payment arrangements is relevant and material.
10. With respect to request 22 and 23 Tennessee consumers respectfully submit that the information sought is relevant and material or may lead to relevant evidence. The TRA vote did not apply to deferred payment agreements. The TRA vote simply found the creation of a new service. It is relevant and material to this proceeding how that service may now affect individual tariff provisions.
11. With respect to item 24, this information is uniquely in the possession of BellSouth and is

a necessary component of the amount multi-million it alleges will affected and adjusted under Tenn. Code Ann. § 65-5-209 and that said information is relevant and material or likely to lead to relevant and material evidence of the accuracy of BellSouth calculations of the dollar effect.

12. With respect to item 25 Tennessee consumers whether BellSouth's policy is to terminate, threaten to terminate or infer impending termination of local service when the end user does not pay as scheduled on accounts allegedly purchased by BellSouth. BellSouth's answer is evasive and does not specifically address its policy regarding non-payment on any accounts it purchases.
13. With respect to item 26, BellSouth's response appears evasive and appears to narrow its response to scripts with the sole purpose of pertaining to late payment.
14. With respect to item 27, BellSouth fails to respond properly or is evasive. The discovery asks for a response by classification of service. Moreover, this request should be considered with item 25 as regards termination of service.
15. With respect to item 29, BellSouth has clearly limited its answer and the motion to compel should be granted.
16. With respect to request 30. BellSouth's responses to the above referenced discovery is evasive and incomplete. The correct answer is that no such provision or communications exist. The Attorney General's staff could review all the documents available and still not be able to reach this conclusion, because it is BellSouth, as a party, that is in a position to cite whatever provision(s) or communication(s) that may exist. The interrogatory actually seeks the negative, which BellSouth inappropriately fails to state, even though this

information goes to the heart of one of the issues before the Authority and was clearly highlighted in the comments of Director Greer. This information is part of BellSouth's case in chief. Without it, BellSouth's is unable to satisfy Director Greer's request.

17. That the character of the information sought by the Consumer Advocate Division in this proceeding is relevant and material or likely to lead to the discovery of admissible evidence.
18. That BellSouth's response to discovery and basis for not complying with the discovery requests of the Consumer Advocate Division is insufficient and contrary to the Rules of Civil Procedure.
19. That BellSouth did not deny discovery item 15, a request to admit, and that discovery item 15 should be deemed admitted in conformance with the rules of civil procedure.
20. That BellSouth's insufficient discovery responses impair the exercise of due diligence, and are dilatory.
21. That the Consumer Advocate and Protection Division, in representing Tennessee consumers, has a substantial need for the discovery to which BellSouth objected or failed to answer and that the Consumer Advocate Division is unable without undue hardship to obtain the materials by other means since the information is in the exclusive possession of BellSouth and a motion to compel should be granted.
22. That the burden of deriving or ascertaining the information in BellSouth's possession is not the same for the Consumer Advocate Division as BellSouth the motion to compel should be granted.
23. That BellSouth discovery responses have caused counsel representing the interests of

Tennessee consumers to conclude that depositions are necessary and that the scheduling order should be modified to permit depositions of BellSouth and possibly of the “customers” with whom BellSouth contracts for its bill processing service.

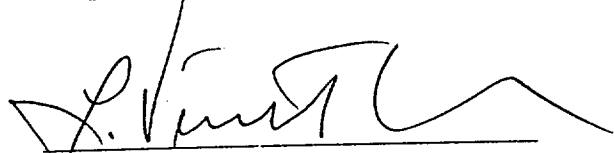
24. That counsel representing Tennessee consumers request the Hearing Officer to modify the scheduling order to permit sufficient time to take depositions.
25. That counsel representing Tennessee consumers would request that BellSouth designate personnel who can address the matters Tennessee consumers sought to discover and BellSouth’s responses to said discovery requests.
26. That a motion to compel should be granted so the Consumer Advocate Division can proceed with due diligence to identify any relevant or admissible evidence or information which may lead to the identification of admissible or relevant evidence.
27. That the persons that the Consumer Advocate Division seeks to depose are BellSouth’s designated representative and the persons identified by BellSouth as persons with knowledge.
28. That BellSouth’s responses provide no assurance that any information it actually produces is all of the information on the subject requested in the data request.
29. That BellSouth responses often do not answer the question asked.
30. That due diligence requires that counsel conduct such discovery as is sufficient to address the entirety of any issues presented in a case and the discovery permitted by the hearing officer and the responses of BellSouth have not satisfied the due diligence requirements of Tennessee consumers or counsel for Tennessee consumers.
31. That a decision which does not grant the motions made herein unfairly prejudices

Tennessee consumers and the Consumer Advocate and Protective Division and prevents substantive and procedural due process.

32. That the failure of BellSouth to respond adversely affects the procedural schedule.
33. That counsel for Tennessee consumers after assessing BellSouth's responses to other discovery request believe that depositions are essential to preparing this case.

Wherefore Tennessee consumers and the Consumer Advocate Division pray that the Hearing Officer grant the Motion to Compel, to deem an answer omitted and to modify the scheduling order to permit the taking of depositions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'V. Williams', is written over a horizontal line.

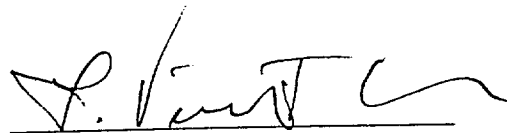
V. Vincent Williams
Deputy Attorney General - Consumer Advocate
Consumer Advocate Division
425 5th Avenue, North
Nashville, TN 37243
(615) 741-8723
BPR. No. 011189

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion has been mailed postage prepaid and transmitted by faximile or hand-delivered to the persons listed below this 4th day of January, 2001.

Guy Hicks, Esq.
Patrick Turner, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

David Waddell, Esq.
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505



L. Vincent Williams

BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
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Item No. 3
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REQUEST: For each and every contract entered into by BellSouth for the Accounts in Tennessee, please describe in detail the method(s) BellSouth uses to notify the end user consumer that ~~it~~ ^{he} has purchased the right to receipt of payment for the end user's account.

RESPONSE: Sections A.37 and E.8 of the General Subscriber Services Tariff covers the Billing and Collections Services that BellSouth offers to interexchange carriers and other third party service providers. These tariffs govern BellSouth's inclusion of third-party service provider charges on BellSouth's bill.

Its it the responsibility of the third-party service provider to advise the customer that their charge will be included with the customer's local exchange company's bill if in fact this is the arrangement made with BellSouth. See, e.g., GSST A.37.1.4.A ("The [third-party service provider] must provide the end user with written notification that future charges for the [third-party service provider] will be included on the end user's bill for Local Exchange Service.").

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REQUEST: If BellSouth contends that Tennessee consumers entered into a principal/agent relationship with any IXC or clearinghouse from whom BellSouth purchases accounts which permit the IXC, CLEC or clearinghouse to create an independent liability between the consumer and any third party, please produce the principal/agent contract, tariff, statutes or rule supporting BellSouth's contention.

RESPONSE: BellSouth has no knowledge of the specifics of any "relationship" that is or may be created between a consumer and an IXC, CLEC, or clearinghouse.

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REQUEST: Tennessee consumers contend that the average rate for basic local exchange services on and after June 6, 1995 were average rates which included "float" as defined by the Director Greer at the September 26 2000 conference, if BellSouth disagrees with this contention please provide each and every fact, law or rule upon which BellSouth relies.

RESPONSE: BellSouth objects to this Request on the grounds that the information sought is unreasonably cumulative or duplicative. BellSouth has filed numerous documents in this docket which amply inform the CAD of the basis for BellSouth's position that the late payment charge is not a charge for a basic service.

Moreover, by a 2-1 vote, the TRA has upheld its previous decision that BellSouth's late payment charge "does not fit within the Section 65-5-208(a)(1) definition of basic service." Tr. at 18. BellSouth, therefore, further objects to this Request on the grounds that it is irrelevant and that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence.

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REQUEST: Assume the hypothetical that rates for basic local exchange services on June 6, 1995 included the working capital necessary to compensate BellSouth for late payments of customer taking advantage of "float", is it BellSouth's position that it would still be able to add a late payment charge to basic local exchange services if the company chose to do so?

RESPONSE: BellSouth objects to this Request on the grounds that the information sought is unreasonably cumulative or duplicative. BellSouth has filed numerous documents in this docket which amply inform the CAD of the basis for BellSouth's position that the late payment charge is not a charge for a basic service.

Moreover, by a 2-1 vote, the TRA has upheld its previous decision that BellSouth's late payment charge "does not fit within the Section 65-5-208(a)(1) definition of basic service." Tr. at 18. BellSouth, therefore, further objects to this Request on the grounds that it is irrelevant and that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence.

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REQUEST: For each and every contract through which BellSouth purports to provide a bill processing service(s) or to purchase the accounts of any CLEC or non-CLEC, please produce any and all copies of all documents wherein the CLEC providing service to the end user discloses to the end user any terms and conditions which subjects that end user to BellSouth's deposit standards regarding service provided by the CLEC.

RESPONSE: BellSouth objects to this question on the grounds that BellSouth simply cannot determine what the question is intended to ask. BellSouth further objects to this Request on the grounds that it is irrelevant and that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. Deposit standards simply are not an issue in this docket.

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REQUEST: Please provide a list in either numerical or alphabetical order depicting each telephone number billed a late payment charge after June 6, 1995 and the amount of the charges, excluding private line tariff customers.

- a. Please provide any and all information, documents, or taped conversations between BellSouth and the end user wherein the end user authorizes the late charge.

RESPONSE: BellSouth objects to this interrogatory on the grounds that it is overly broad and that responding to it would be unduly burdensome. Without waiving this objection, BellSouth states that no Tennessee customer has been charged the late payment charge as proposed in BellSouth's tariff filing under this docket.

BellSouth notes that some Tennessee customers are located in five "fringe areas" listed in BellSouth's General Subscriber Services Tariff (GSST), Section A3.20.5 - .9. In accordance with provisions of BellSouth's tariff which have been in effect for years, customers in these "fringe areas" are subject to the exchange rates and regulations fixed by the regulatory authorities in adjacent states. BellSouth's filing in TRA Docket 00-00041 does not affect the rates, terms and conditions that apply to customers in these "fringe areas".

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REQUEST: Please completely describe how the company implemented late payment arrangements and made amount determinations on June 6, 1995.

RESPONSE: BellSouth objects to this request on the grounds that it is vague and overly broad and that responding to it would be unduly burdensome. BellSouth further objects to this Request on the grounds that it is irrelevant and that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence.

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Tennessee Regulatory Authority
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REQUEST: Please state the interest rate in effect on June 6, 1995 for deferred payment agreements. (Tariff A2.4.3G).

RESPONSE: By a 2-1 vote, the TRA has upheld its previous decision that BellSouth's late payment charge "does not fit within the Section 65-5-208(a)(1) definition of basic service." Tr. at 18. BellSouth, therefore, objects to this Request on the grounds that it is irrelevant and that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, BellSouth states that it has no documents in its possession which reflect the actual interest rate that was in effect in 1995.

BellSouth Telecommunications, Inc.
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REQUEST: If BellSouth changed its position from one in which the proposed late payment charge was not a service or now relies upon the interim decision that the proposed late payment charge is a service please describe how the service will operate, including but not limited to, how long the service will permit a consumer to continue to be served or provide "float" what types of reporting will be made to credit reporting agencies regarding the period the service is in effect and whether payment of the charge alone will permit the continuation of service and the particular language of the tariff pertaining to any operational features.

RESPONSE: BellSouth objects to this request to the extent that it attempts to characterize BellSouth's position in this docket. BellSouth further objects to the request on the grounds that it is vague, confusing, and overly broad.

Without waiving these objections, BellSouth states that it will continue using the same procedures that it uses today to determine whether and when to disconnect service for nonpayment of a bill, and that the same procedures that are used today will continue to be used to determine whether and when to report information to credit reporting agencies. Moreover, the late payment charge is neither a payment for the use of money nor consideration for the forbearance of collecting an amount due to BellSouth. Payment of the late payment charge alone, therefore, will not prevent the disconnection of a customer's service for nonpayment of a bill.

BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
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REQUEST: With respect to 209(e), produce any and all documents and studies which show the amount which would be generated by the proposed tariff for local basic exchange service before any reduction due to lifeline and linkup exceptions.

RESPONSE: To the extent that it seeks the revenues associated only with "basic local exchange telephone services" as that term is defined in T.C.A. §65-5-208(a)(1), BellSouth objects to the request on the grounds that responding to it would be overly burdensome. Without waiving this objection, the attached documents show the aggregate amount of revenue which would be generated by the proposed tariff. These documents are proprietary and are provided pursuant to the protective order that has been entered in this docket.

BellSouth Telecommunications, Inc.
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REQUEST: Please state whether BellSouth's policy, presently or in the past, is to terminate, threaten to terminate or infer impending termination of an end users local basic exchange service when they do not pay as scheduled on accounts allegedly purchased by BellSouth.

RESPONSE: BellSouth objects to the use of the term "threaten" in this Request. Without waiving this objection, BellSouth states that it does not suspend and/or terminate service for non-payment of unregulated charges. Nor does BellSouth terminate service for non-payment of disputed regulated charges.

Instead, BellSouth complies with section A2.2.10 of its Tariff, which allows it to suspend and/or terminate a customer's local exchange service for nonpayment of any sum due for exchange, long distance or other service that is not in dispute. BellSouth determines each customer's treatment based on that customer's credit status. Moreover, before suspending or terminating the service of a customer who does not subscribe to Lifeline service, BellSouth sends the customer a written notice advising that local service will be denied if the regulated charges are not paid. BellSouth advises Lifeline customers that: local service will be denied if the regulated non-toll charges are not paid; and toll will be denied if the regulated toll charges are not paid.

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REQUEST: Please provide any and all scripts used in training and in current day to day customer service which pertain to customer payments which are or may be late and extended.

RESPONSE: BellSouth objects to this request on the grounds that it is vague and to the extent that it seeks to require BellSouth to produce a document it does not create or maintain in the ordinary course of business. Without waiving these objections, BellSouth does not have any "scripts" pertaining to customer payments which are or may be late and extended.

BellSouth Telecommunications, Inc.
Tennessee Regulatory Authority
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REQUEST: Please explain the manner and process for the allocation of partial payments to the amounts appearing on BellSouth's bill by classification of service.

RESPONSE: The allocation of a partial payment is based on the nature of the customer's service being billed. All partial payments are first allocated to pay outstanding amounts owed for services that would result in a denial of service if not paid. Any remaining amount is applied to "nondeniable" services. An example of this is an outstanding bill that includes local service of \$15 (a "deniable" service) and inside wire of \$5 (a "nondeniable" service). If a payment of \$10.00 was received, it would be applied in total to the "deniable" service. If the partial payment was \$17, the "deniable" service would be credited with \$15 and the remaining \$2 would be applied to the "nondeniable" service.

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REQUEST: Please produce each document, email, photograph, or any other article or thing whatsoever, which corroborates any party of BellSouth's claims in this matter, as to all issues, including but not limited to, credibility or any other issue, which is adverse to your contentions regarding the same.

RESPONSE: BellSouth objects to this request to the extent that it relates to BellSouth's claim that the late payment charge is not a charge for a basic service on the grounds that that such information is irrelevant in light of the TRA's ruling on that issue. Without waiving this objection, BellSouth states that its claims regarding the Issue No. 2 and T.C.A. §65-5-209(e) are supported by its responses to these discovery requests (including all documents attached thereto); its responses to data requests that have previously been served on the CAD in this docket; the briefs and memorandum BellSouth has already filed in this docket and the statutes, rules, regulations, tariff, cases, and other authority cited therein; the billing contracts which have already been produced to the CAD; and each and every document BellSouth has filed in this docket or served upon the CAD in this docket.

The attached Cost Study is proprietary and is provided pursuant to the protective order that has been entered in this docket.

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REQUEST: Quote verbatim the provision in the third-party billing arrangements which provide for accessing a late charge or prohibit same. For each provision so quoted provide the name and address of the company involved, the start date and expiration date of the contract or tariff involved, and any communications directed toward consumers evidencing notice of these arrangements to consumers.

RESPONSE: BellSouth objects to this request on the grounds that it seeks to require BellSouth to produce a document it does not create or maintain in the ordinary course of business. If the third parties direct such communications to consumers, it is the third parties – not BellSouth – that would be expected to have copies of such communications. In any event, BellSouth is not aware of any “communications directed toward consumers evidencing notice of these arrangements to consumers” that are in BellSouth’s possession.

With regard to the remainder of the request, Rule 33.03 of the Tennessee Rules of Civil Procedure provides that

When the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served . . . , and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to . . . inspect such records

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On August 23, 2000, BellSouth delivered (pursuant to the protective order entered in this docket) copies of the documents from which the CAD may derive the answer to this request as easily as BellSouth could. BellSouth, therefore, has sufficiently responded to this request.

To the extent that this request seeks any additional response, BellSouth objects to the Request on the grounds that the information sought is obtainable from some other source that is more convenient, less burdensome, or less expensive – namely, the documents themselves.